

LAW OFFICE OF

ETHAN STEELE, P.C.

145 S. 6th Avenue

Tucson, AZ. 85701

520-290-0729

ASB #9312

Petitioner

SUPREME COURT, STATE OF ARIZONA

In the matter of:

Petition to Amend Rule 18, Arizona

Rules of Civil Appellate Procedure

(Oral Arguments)

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No. R- _____

PETITION TO AMEND RULE

Pursuant to Rule 28, Rules of the Supreme Court, Petitioner asks the Court to consider the following amendment to Rule 18, Arizona Rules of Civil Appellate Procedure, pertaining to oral arguments before the Court of Appeals:

I. SUMMARY OF PROPOSED AMENDMENT

This proposed amendment concerns the time within which a party must file their request for oral argument with the Court of Appeals. Presently, Rule 18 provides that a request for oral argument must be filed on or before the earlier of the date the reply brief is due or filed. The proposed amendment would change the deadline for filing a request for oral argument to 10 days (or other appropriate period) after the reply brief was due or filed.

II. PROPOSED TEXT

Present text (relevant portion):

An appeal may be scheduled for oral argument if, on

1 or before the earlier of the date the reply brief is
2 due or filed, a party files with the Court of Appeals
3 a separate instrument requesting oral argument. *

4 Proposed amended text:

5 An appeal may be scheduled for oral argument if, on
6 or before the earlier of 10 days after the reply
7 brief was due or filed, a party files with the Court
8 of Appeals a separate instrument requesting oral
9 argument. * * *

10 **III. GROUNDS FOR PROPOSED AMENDMENT**

11 The present rule requiring that a request for oral argument be filed on or before the
12 earlier of the date the reply brief is due or filed^a potentially prejudices an appellee and is
13 contrary to the interests of judicial economy by encouraging unnecessary requests for oral
14 argument. An appellee, after filing an Answering Brief, may be satisfied with the record and
15 not believe that oral argument is necessary at that point. However, that view may change
16 based upon what is stated in the appellants' Reply Brief. Though, in theory, a Reply Brief is
17 limited to points responding to the Answering Brief, in practice this restriction is inexact. The
18 reality is that a Reply Brief may raise unanticipated points to which an appellee may wish to
19 respond through oral argument. But an appellee will not know this until the Reply Brief has
20 been received and reviewed, at which time it is too late to request oral argument under the
21 current rule. (This is in contrast to an appellant, who can know very well whether they wish
22 oral argument at the time they file their Reply Brief.) Therefore, the present rule may leave
23 an appellee with the dilemma of either requesting oral argument that is not presently needed
24 (and hence is contrary to judicial economy), or risk being prejudiced by not requesting oral
25 argument where it might later turn out to be desirable upon review of the Reply Brief. The
26 proposed amendment eliminates this dilemma by avoiding possible prejudice to the appellee
and promotes judicial economy by avoiding unnecessary requests for oral argument.

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DATED this _____ day of _____, 2005.

ETHAN STEELE